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October 8, 1993

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: MM Docket No. 92-3  
RM-7874 and RM-7958

Dear Mr. Caton:

Submitted herewith for filing, on behalf of our client, Schuyler H. Martin, permittee of Radio Station KPXA(FM), Sisters, Oregon, are an original and nine (9) copies of his Motion To Strike in the above-referenced proceeding.

Please direct any inquiries concerning this submission to the undersigned.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS &  
HANDLER

By:

Irving Gastfreund

Enclosures

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BEFORE THE

**Federal Communications Commission**

OCT - 8 1993

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Section 73.203(b) )

Of The Commission's Rules )

Table of Allotments )

FM Broadcast Stations )

(Prineville and Sisters, Oregon) )

MM Docket No. 92-3

RM-7874 and

RM-7958

To: The Commission**MOTION TO STRIKE**

SCHUYLER H. MARTIN ("Martin"), permittee of Radio Station KPXA(FM), Sisters, Oregon, by his attorneys, hereby respectfully requests that the Opposition To Application For Review filed in the above-captioned proceeding on September 24, 1993 by a group of broadcast licensees serving certain communities in and around Bend, Oregon (hereinafter collectively referred to as "Licensees"<sup>1</sup>) be summarily stricken without consideration. In support whereof, it is shown as follows:

<sup>1</sup> Those licensees and their respective stations and communities are the following: Central Oregon Broadcasting, Inc. (licensee of KBND, Bend, Oregon; and KLRR, Redmond, Oregon); Redmond Broadcast Group, Inc. (licensee of KPRB and KSJJ, Redmond, Oregon); Highlakes Broadcasting Company (licensee of KRCO and KIJK-FM, Prineville, Oregon; JJP Broadcasting, Inc. (licensee of KQAK, Bend, Oregon); Oak Broadcasting, Inc. (licensee of KGRL and KXIQ, Bend, Oregon); Sequoia Communications (licensee of KICE, Bend, Oregon); and The Confederated Tribes of the Warm Springs Reservation of Oregon (licensee of KTWS, Bend, Oregon; and KTWI, Warm Springs, Oregon).

The Licensees' Opposition To Application For Review was filed with the Commission on September 24, 1993, purportedly in opposition to Martin's August 9, 1993 Application For Review in this proceeding. Under Section 1.115(d) of the Commission's Rules, an opposition to an application for review must be filed within 15 days after the application for review is filed with the Commission. Since Martin's Application For Review was filed with the Commission on August 9, 1993, any opposition to that Application For Review by the Licensees was required to be filed with the Commission by no later than the close of business on Tuesday, August 24, 1993.

For reasons best known to the Licensees and their joint counsel, their joint Opposition to Martin's Application For Review was filed with the Commission on September 24, 1993 -- i.e., one month late. No petition for leave to file was submitted by the Licensees, nor was any explanation given for the lack of diligence and timeliness in the Licensees' filing. Indeed, the Licensees' Opposition seems to avoid any reference to the fact that Martin's Application For Review was filed on August 9, 1993 -- one and one-half months prior to the date of filing of the Licensees' Opposition.

In light of all the foregoing, the Licensees' Opposition to Martin's Application For Review is hopelessly late-filed and should therefore be summarily stricken without consideration.<sup>2</sup>

Even if considered on its purported merits, the Licensees' Opposition should be completely discounted as patently spurious. The Opposition essentially attempts to set up a "straw man" for the purpose of knocking it down: the Licensees' contend that, in his Application For Review, Martin relied on the fact that only he could have availed himself of the new "one step" upgrade for KPXA(FM)'s technical facilities.

This is a mischaracterization of the arguments made by Martin in his Application For Review. Martin therein noted, inter alia, that, in Amendment Of The Commission's Rules To Permit FM Channel And The Class Modifications By Application (MM Docket No. 92-159. \_\_\_ FCC Rcd \_\_\_, FCC 93-299 (released July 13, 1993), the Commission expressly stated that same-channel upgrades in channel class for FM stations will be treated as "minor and non-controversial as they simply reflect station operations . . .," and that, therefore, "there is good cause for proceeding without notice and comment and for making the rule change effective upon publication in the Federal Register." Id. Slip op at 3 n. 18.

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<sup>2</sup> Such late filings are not uncommon for the Licensees: As shown in Martin's previous submission in this proceeding, the Licensees' November 13, 1992 Petition For Reconsideration in this proceeding was also late-filed.

Based on the foregoing, Martin demonstrated in his Application For Review that it was totally arbitrary and capricious and an abuse of discretion for the Bureau to conclude, in its Order Denying Motion To Strike herein as follows:

"Federal Register publication of both the Notice of Proposed Rulemaking and the Report and Order in broadcast allotment proceedings is thus required under Sections 552(a)(1)(D) and 553(b) of the Administrative Procedure Act, and that is our consistent practice. [Emphasis added.]"

Order Denying Motion To Strike, DA 93-776 (Mass Media Bureau released July 8, 1993), slip op at 2 ¶9.

In light of all the foregoing, even if considered on its purported "merits", the Licensees' Opposition should nonetheless be completely discounted.

WHEREFORE, the foregoing premises considered, the Licensees' September 24, 1993 Opposition To Application For Review should be summarily stricken without consideration, or, in the alternative, rejected out of hand.

Respectfully submitted,

SCHUYLER H. MARTIN

By: 

Irving Gastfreund

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Handler

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His Attorneys

October 8, 1993

**CERTIFICATE OF SERVICE**

I, Mary Odder, a secretary with the law firm of Kaye, Scholer, Fierman, Hays & Handler, hereby certify that I have on this 8th day of October, 1993, sent copies of the foregoing "Motion To Strike" by First-Class U.S. Mail, postage prepaid, or via hand-delivery, as indicated below, to the following:

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\*/ Via Hand-Delivery